

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE BOARD OF PATENT APPEALS AND INTERFERENCES

In re Application of
Chu

Serial No.: **09/902834**

Filed: **July 10, 2001**

For: **Active Labels for Products**

Attorney's Docket No: **4123-004**

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APPEAL BRIEF

(I.) REAL PARTY IN INTEREST

The real party in interest is Victor Chu.

(II.) RELATED APPEALS AND INTERFERENCES

An appeal was filed in U.S. Application Serial No. 08/770,712, which is now issued as U.S. Patent No. 6,279,170.

(III.) STATUS OF CLAIMS

Claims 1 – 90 have been presented.

Claims 16, 17, 20, 21, 43 & 61 have been canceled.

Claims 1-15, 18, 19, 22-42, 44-60 and 62-90 are pending and were finally rejected in the Office Action dated April 28, 2006.

(IV.) STATUS OF AMENDMENTS

No amendments have been filed after the final rejection.

(V.) SUMMARY OF CLAIMED SUBJECT MATTER

Claim 1 is directed to a digital label for a product. The label comprises a base (Fig. 1, ref 42) adapted to be affixed to the product, and an electronic display (Fig. 1, ref. 20) affixed to the base. The display is not associated with the inherent function of the product (Specification, p.3, lines 15 – 22). A programmable circuit (Fig. 1, ref 30) is operatively connected to the display. The programmable circuit is programmed to output information about the product to the display. (Specification, p. 5, lines 3 – 13). The information is animated. (Specification, p. 7, lines 17 – 22). For example, the output information may comprise an animated logo identifying the source of the products. (Specification, p. 7, lines 17 – 22).

Claim 9 is directed to a method for labeling a product. The method comprises attaching an electronic display to the product (Fig. 7 and Specification, p. 7, lines 11-16) and programming the electronic display to display animated information about the product (Specification, p. 5, lines 3 – 13 and p. 7, lines 17 – 22). The display is not associated with the inherent function of the product. (Specification, p.3, lines 15 – 22)

Claim 29 is directed to an electronic label for a product. The label comprises a base (Fig. 1, ref 42) adapted to be affixed to the product, and an electronic display (Fig. 1, ref. 20)

affixed to the base. A programmable circuit (Fig. 1, ref 30) is operatively connected to the electronic display and is programmed to output product information or source information to the display (Specification, p. 5, lines 3 – 13 and p. 3, line 23 – p. 4, line 4).

Claim 47 is directed to a method for labeling a product. The method comprises attaching an electronic display to the product (Fig. 7, and Specification, p. 7, lines 11-16) and programming the electronic display to display product information and/or source information (Specification, p. 5, lines 3 – 13 and p. 3, line 23 – p. 4, line 4).

Claims 14 and 15 depend from independent claim 9. Claim 14 recites a pressure sensitive button (Fig. 3, ref 50) used as an input device to manually change the image output to the display (Specification, p. 6, lines 14 – 23). Claim 15 recites a touch screen display (Fig. 5, ref. 52) used as an input to manually change the image output to the display (Specification, p. 6, line 24 – p. 7, line 2).

Claims 27 and 28 depend from independent claim 1. Claim 27 recites a pressure sensitive button (Fig. 3, ref 50) used as an input device to manually change the image output to the display (Specification, p. 6, lines 14 – 23). Claim 28 recites a touch screen display (Fig. 5, ref. 52) used as an input to manually change the image output to the display (Specification, p. 6, line 24 – p. 7, line 2).

Claims 36 and 37 depend from independent claim 29. Claim 36 recites a pressure sensitive button (Fig. 3, ref 50) used as an input device to manually change the image output to the display (Specification, p. 6, lines 14 – 23). Claim 37 recites a touch screen display (Fig. 5, ref. 52) used as an input to manually change the image output to the display (Specification, p. 6, line 24 – p. 7, line 2).

Claims 56 and 57 depend from independent claim 47. Claim 56 recites a pressure sensitive button (Fig. 3, ref 50) used as an input device to manually change the image output to the display (Specification, p. 6, lines 14 – 23). Claim 57 recites a touch screen display (Fig. 5,

ref. 52) used as an input to manually change the image output to the display (Specification, p. 6, line24 – p. 7, line 2).

(VI.) GROUNDS OF REJECTION TO BE REVIEWED ON APPEAL

The rejections to be reviewed on appeal are as follows:

- a. The rejection of claims 1-15, 18, 19 and 22-46 under 35 U.S.C. §112, second paragraph, as being indefinite.
- b. The rejection of claims 1, 2, 5-8, 29, 30 and 33-36 under 35 U.S.C. §102(b) as being anticipated by Gomersall (U.S. Pat. No. 4,500,880).
- c. The rejection of claims 1–13, 18, 19, 26, 29-35, 38–42, 44–45, 58-60 and 62-90 under 35 U.S.C. §102(b) as being anticipated by Fitch (U.S. Pat. No. 5,912,653).
- d. The rejection of claim 14, 15, 27, 28, 36, 37, 56, and 57 under 35 U.S.C. §103 as being obviated by Fitch (U.S. Pat. No. 5,912,653).

(VII.) ARGUMENT

The invention relates to a digital label for a product that is intended to replace or supplement existing metal, leather, and fabric labels. The digital label comprises an electronic display and associated memory for storing label information. Label information is defined to mean a brand name or logo, product information, or source information. None of the prior art cited by the Examiner discloses an electronic label for products. For reasons set forth below, the Examiner's rejections of the claims should be reversed.

A. Claims 1-15, 18, 19 and 22-46 Are As Definite As the Subject Matter Permits

The Examiner asserts that the phrase “wherein the electronic display is not associated with the inherent function of the product” is indefinite. On the contrary, the recited language is intended to exclude displays that are an inherent feature of the product. For example, a display for a cell phone or computer that is part of the user interface is excluded from the scope of the claims. However, a separate label display for a cell phone or computer that functions only as a label and does not function as part of the user interface would be included within the scope of the claim. This language, when read in light of the specification, would be readily understood by those skilled in the art and is as precise as the English language allows. “If the meaning of the claim is discernible, even though the task may be formidable and the conclusion may be one over which reasonable persons will disagree, we have held the claim sufficiently clear to avoid invalidity on indefiniteness grounds.” *Exxon Research and Engineering Co. v. U.S.*, 265 F.3d 1371, 60 U.S.P.Q.2d 1272 (Fed. Cir. 2001).

The Examiner argues that the claim is contradictory on its face because the display outputs information about the product and is therefore associated with the inherent function of the product. The Examiner has simply confused the issue. The display may output information concerning the product, but the display itself is not required as part of the inherent function of the product. Accordingly, Applicant does not believe that the language is indefinite.

The Examiner further asserts, with regard to independent claim 29, that the recitation of “label information, product information, or source information” renders the claim indefinite since the product is not being claimed as part of the invention. Applicant concurs that the product itself is not being claimed. However, the product is recited in the claim to provide context for the invention. There is nothing improper about making reference to unclaimed elements as a way of defining a claimed element. In this case, the reference to product information simply serves to define the type of the output information, which is being claimed.

B. Gomersall Does Not Anticipate Claims 1, 2, 5-8, 29, 30 and 33-36

For a prior art reference to anticipate a claim under 35 U.S.C. §102 (b), every limitation of the claim must be identically disclosed in a single prior art reference. *In re Bond*, 810 F. 2d. 831, 15 U.S.P.Q.2d 1566 (Fed. Cir. 1990). Gomersall does not disclose all of the limitations of claims 1 and 29, and therefore, does not anticipate those claims.

Claims 1 and 29 both recite a base adapted to be affixed to a product. Claims 1 and 29 further recite an electronic display and a programmable circuit programmed to output information about the product to the display. Clearly, the reference to product in the definition of the output information refers to the product to which the base is attached. Thus, according to the plain language of claims 1 and 29, the programmable circuit must output information about the product to which the label is attached.

The display device disclosed in Gomersall attaches to a display shelf on which other products can be displayed. The information displayed (e.g., price information) concerns the products displayed on the display shelf, not about the display shelf. Therefore, Gomersall does not satisfy the limitation in claims 1 and 29 that the displayed information relate to the product to which the label is attached.

Claim 1 further recites that the information be animated. The display device in Gomersall does not display animated images. The Examiner simply ignores this limitation.

C. Fitch Does Not Anticipate Claims 1 – 13, 18, 19, 26, 29-35, 38-42, 44-45, 58-60 and 62-90.

Fitch discloses a display that can be attached to a garment to display video. The video display provides a means of self expression. There is no suggestion in Fitch to use the display as a label to display information about the product or its source.

Independent claims 1 and 9 require that the information output to the display be "about the product" to which the label is attached. Fitch does not disclose outputting information about the product to which the label is attached. Therefore, Fitch does not anticipate claims 1 and 9.

Independent claims 29 and 47 require that information output to the display be "product information or source information." The terms product information and source information are defined in the specification. The Examiner does not even argue that the display in Fitch displays product information or source information. Accordingly, Fitch does not anticipate claims 29 and 47.

D. Fitch Does Not Obviate Claims 14, 15, 27, 28, 36, 37, 56, and 57

Fitch discloses a display that can be attached to a garment to display video. The video display provides a means of self expression. There is no suggestion in Fitch to use the display as a label to display information about the product or its source.

Claims 14 and 15 depend from independent claim 9. Independent claim 9 requires that the information output to the display be "about the product" to which the label is attached. Fitch does not teach or suggest outputting information about the product to which the label is attached. Therefore, Fitch does not render claim 9 or its dependent claim obvious. Accordingly, the rejection of claims 14 and 15 should be reversed.

Claims 27 and 28 depend from independent claim 1. Independent claim 1 requires that the information output to the display be "about the product" to which the label is attached. Fitch does not teach or suggest outputting information about the product to which the label is attached. Therefore, Fitch does not render claim 1 or its dependent claim obvious. Accordingly, the rejection of claims 27 and 28 should be reversed.

Claims 36 and 37 depend from independent claim 29. Claim 29 requires that the information output to the display be "product information or source information." These terms are defined on pages 3 and 4 of the specification. Fitch does not teach or suggest outputting

product information or source information as claimed. Therefore, Fitch does not render claim 29 or its dependent claim obvious. Accordingly, the rejection of claims 36 and 37 should be reversed.

Claims 56 and 57 depend from independent claim 47. Claim 47 requires that the information output to the display be "product information or source information." These terms are defined on pages 3 and 4 of the specification. Fitch does not teach or suggest outputting product information or source information as claimed. Therefore, Fitch does not render claim 47 or its dependent claim obvious. Accordingly, the rejection of claims 56 and 57 should be reversed.

(VIII.) CLAIMS APPENDIX

AMENDMENTS TO THE CLAIMS

1. A label for a product comprising:
 - a base adapted to be affixed to said product;
 - an electronic display affixed to said base wherein said electronic display is not associated with the inherent function of the product; and
 - a programmable circuit operatively connected to said electronic display, said programmable circuit being programmed to output information to said electronic display for display thereon, wherein the information is about the product and is animated.
2. The label according to claim 1 wherein said electronic display is a liquid crystal display.
3. The label according to claim 2 wherein said liquid crystal display includes a backlight.
4. The label according to claim 3 further including a power switch to alternately turn the power to said backlight on and off.
5. The label according to claim 2 further including a plurality of screen images associated with said display panel which can be selectively displayed on the electronic display by a user.
6. The label according to claim 5 further including an input device to manually change the screen images.
7. The label according to claim 5 wherein said plurality of screen images include a logo screen.

8. The label according to claim 5 wherein said plurality of screen images include at least one product information screen.

9. A method for labeling a product, said method comprising:

attaching an electronic display to the product, wherein the electronic display is not associated with the inherent function of the product; and
programming the electronic display to display information, wherein the information is about the product and is animated.

10. The method according to claim 9 wherein the electronic display is a liquid crystal display.

11. The method according to claim 9 wherein the step of programming said display comprises programming the display to display a plurality of screen images.

12. The method according to claim 11 wherein the electronic display includes an input device to manually change said plurality of screen images.

13. The method according to claim 11 wherein said plurality of screen images change automatically without input from a user.

14. The method according to claim 12 wherein said input device comprises a pressure-activated button on said electronic display.

15. The method according to claim 12 wherein said input device comprises a touch screen.

18. The method according to claim 9 wherein said liquid crystal display includes a backlight.

19. The method according to claim 18 further including a power switch to alternately turn the power to said backlight on and off.

22. The method according to claim 11 wherein said plurality of screen images include a logo screen.

23. The method according to claim 11 wherein said plurality of screen images include at least one product information screen.

24. The method according to claim 9 wherein the electronic display is flexible.

25. The label according to claim 1 wherein the label is flexible.

26. The label according to claim 5 wherein said plurality of screen images change automatically without input from the user.

27. The label according to claim 6 wherein said input device comprises a pressure-activated button on said electronic display.

28. The label according to claim 6 wherein said input device comprises a touch screen.

29. A label for a product comprising:

a base adapted to be affixed to the product;

an electronic display affixed to the base; and

a programmable circuit operatively connected to the electronic display, the programmable circuit being programmed to output information comprising, product information or source information.

30. The label according to claim 29 wherein the electronic display is a liquid crystal display.

31. The label according to claim 30 wherein the liquid crystal display includes a backlight

32. The label according to claim 31 further including a power switch to alternately turn the power to the backlight on and off.

33. The label according to claim 30 further including a plurality of screen images associated with the display panel which can be selectively displayed on the electronic display by a user.

34. The label according to claim 33 further including an input device to manually change the screen images.

35. The label according to claim 33 wherein the plurality of screen images change automatically without input from the user.

36. The label according to claim 34 wherein the input device comprises a pressure-activated button on said electronic display.

37. The label according to claim 34 wherein the input device comprises a touch screen.

38. The label according to claim 33 wherein the plurality of screen images include a logo screen.

39. The label according to claim 33 wherein the plurality of screen images include at least one product information screen.

40. The label according to claim 29 wherein the information comprises a brand name or a slogan that identifies the origin of the product.

41. The label according to claim 29 wherein the product information comprises features of the product, use of the product, material content of the product or care of the product.

42. The label according to claim 29 wherein the source information comprises an address, a telephone number or an Internet address for the manufacturer, seller or source of the product.

44. The label according to claim 29 wherein the information is product information.

45. The label according to claim 29 wherein the information is source information.

46. The label according to claim 29 wherein the label is flexible.

47. A method for labeling a product, the method comprising:
- attaching an electronic display to the product; and
 - programming the electronic display to display information comprising, product information or source information.
48. The method according to claim 47 wherein the electronic display is a liquid crystal display.
49. The method according to claim 48 wherein the liquid crystal display includes a backlight.
50. The method according to claim 49 further including a power switch to alternately turn the power to the backlight on and off.
51. The method according to claim 48 further including a plurality of screen images associated with the display panel which can be selectively displayed on the electronic display by a user.
52. The method according to claim 51 further including an input device to manually change the plurality of screen images.
53. The method according to claim 51 wherein the plurality of screen images include a logo screen.
54. The method according to claim 51 wherein the plurality of screen images include at least one product information screen.

55. The method according to claim 51 wherein said plurality of screen images change automatically without input from a user.
56. The method according to claim 52 wherein said input device comprises a pressure-activated button on said electronic display.
57. The method according to claim 52 wherein said input device comprises a touch screen.
58. The method according to claim 47 wherein the information comprises a brand name or a slogan that identifies the origin of the product.
59. The method according to claim 47 wherein the product information comprises features of the product, use of the product, material content of the product or care of the product.
60. The method according to claim 47 wherein the source information comprises an address, a telephone number or an Internet address for the manufacturer, seller or source of the product.
62. The method according to claim 47 wherein the information is product information.
63. The method according to claim 47 wherein the information is source information.
64. The method according to claim 47 wherein the electronic display is flexible.
65. The label according to claim 1 wherein said information identifies the origin of said product.

66. The label according to claim 1 wherein said electronic display is enclosed in a watertight encasement.

67. The label according to claim 1 wherein said base is affixed to said product by one of an adhesive, by sewing and by a fastener.

68. The label according to claim 67 wherein said fastener is selected from the group consisting of hooks, screws, buckles, snaps, VELCRO and pins.

69. The label according to claim 1 wherein said label is enclosed in a cartridge to be placed in a pocket of said product.

70. The label according to claim 1 wherein the information is a logo.

71. The method according to claim 9 wherein said information identifies the origin of said product.

72. The method according to claim 9 wherein said electronic display is enclosed in a watertight encasement.

73. The method according to claim 9 wherein said electronic display is attached to said product by one of an adhesive, by sewing and by a fastener.

74. The method according to claim 73 wherein said fastener is selected from the group consisting of hooks, screws, buckles, snaps, VELCRO and pins.

75. The method according to claim 9 wherein said electronic display is enclosed in a cartridge to be placed in a pocket of said product.

76. The method according to claim 9 wherein the information is a logo.

77. The label according to claim 29 wherein the information is animated.

78. The label according to claim 77 wherein the information is a logo.

79. The label according to claim 29 wherein the source information identifies the origin of the product.

80. The label according to claim 29 wherein the electronic display is enclosed in a watertight encasement.

81. The label according to claim 29 wherein the base is affixed to the product by one of an adhesive, by sewing and by a fastener.

82. The label according to claim 81 wherein the fastener is selected from the group consisting of hooks, screws, buckles, snaps, VELCRO and pins.

83. The label according to claim 29 wherein the label is enclosed in a cartridge to be placed in a pocket of the product.

84. The method according to claim 47 wherein the information is animated.

85. The method according to claim 84 wherein the information is a logo.

86. The method according to claim 47 wherein the source information identifies the origin of the product.

87. The method according to claim 47 wherein the electronic display is enclosed in a watertight encasement.

88. The method according to claim 47 wherein the electronic display is attached to the product by one of an adhesive, by sewing and by a fastener.

89. The method according to claim 84 wherein the fastener is selected from the group consisting of hooks, screws, buckles, snaps, VELCRO and pins.

90. The method according to claim 47 wherein the electronic display is enclosed in a cartridge to be placed in a pocket of the product.

(IX.) EVIDENCE APPENDIX

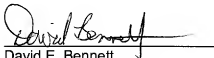
There is no evidence that needs to be considered on appeal.

(X.) RELATED PROCEEDINGS APPENDIX

There are no decisions rendered by a court or the Board of Patent Appeals pertaining to this matter.

Respectfully submitted,

COATS & BENNETT, P.L.L.C.

A handwritten signature in black ink, appearing to read "David E. Bennett", is written over a horizontal line.

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